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| To: Commissioner for Patents for **Examiner James A. Reagan** **Group Art Unit 3621** | Facsimile No.: **571/273-8300** |
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| From: Michele Morrow Legal Assistant to Francis Lammes | No. of Pages Including Cover Sheet: **32** |

Message:

Enclosed herewith:

- Transmittal of Appeal Brief; and
- Appeal Brief.

Re: Application No. 09/788,059

Attorney Docket No: **YOR920000804US1**

Date: Tuesday, June 20, 2006

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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|---|---|---|
| In re application of: Bantz et al. | § | Group Art Unit: 3621 |
| | § | |
| Serial No.: 09/788,059 | § | Examiner: Reagan, James A. |
| | § | |
| Filed: February 16, 2001 | § | Attorney Docket No.: YOR920000804US1 |
| | § | |
| For: Apparatus and Methods for Providing an Estimated Time of Arrival Based Marketplace | § | |

**35526**
PATENT TRADEMARK OFFICE
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By: ~~Michele Morrow~~
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## TRANSMITTAL OF APPEAL BRIEF

Commissioner for Patents
P.O. Box 1450
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Sir:
ENCLOSED HEREWITH:

* Appeal Brief (37 C.F.R. 41.37)

A fee of $170.00 is required for filing this Appeal Brief. Please charge this fee to IBM Corporation Deposit Account No. 50-0510. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 50-0510. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 50-0510.

Respectfully submitted,

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*PATENT*

Docket No. YOR920000804US1

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Bantz et al.             §

Serial No. 09/788,059                          §    Group Art Unit: 3621
                                               §
Filed: **February 16, 2001**                   §    Examiner: Reagan, James A.
                                               §
For: **Apparatus and Methods for**             §
**Providing an Estimated Time of**             §
**Arrival Based Marketplace**                  §

**Commissioner for Patents**
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>
> By: *Michele Morrow*
>      Michele Morrow

**35526**
PATENT TRADEMARK OFFICE
CUSTOMER NUMBER

## APPEAL BRIEF (37 C.F.R. 41.37)

This brief is in furtherance of the Notice of Appeal, filed in this case on May 1, 2006.

A fee of $170.00 is required for filing this Appeal Brief. Please charge this fee to IBM Corporation Deposit Account No. 50-0510. No additional fees are believed to be necessary. If, however, any additional fees are required, I authorize the Commissioner to charge these fees which may be required to IBM Corporation Deposit Account No. 50-0510. No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and I authorize the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 50-0510.

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# REAL PARTY IN INTEREST

The real party in interest in this appeal is the following party: International Business Machines Corporation.

## RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal, there are no such appeals or interferences.

# STATUS OF CLAIMS

## A. TOTAL NUMBER OF CLAIMS IN APPLICATION

Claims in the application are: 1-5, 8-16, 19-27, and 30-33.

## B. STATUS OF ALL THE CLAIMS IN APPLICATION

1. Claims canceled: 6, 7, 17, 18, 28, and 29.
2. Claims withdrawn from consideration but not canceled: NONE.
3. Claims pending: 1-5, 8-16, 19-27, and 30-33.
4. Claims allowed: NONE.
5. Claims rejected: 1-5, 8-16, 19-27, and 30-33.
6. Claims objected to: NONE.

## C. CLAIMS ON APPEAL

The claims on appeal are: 1-5, 8-16, 19-27, and 30-33.

# STATUS OF AMENDMENTS

There are no amendments after the final rejection.

.

# SUMMARY OF CLAIMED SUBJECT MATTER

*Independent claims 1, 12, and 23:*

The present invention provides a method of providing service provider information to a client device in a distributed computer system. (Specification, page 10, lines 22-24) The present invention obtains bids from a plurality of service providers for providing a service. (Specification, page 10, line 24, to page 12, line 22) The present invention obtains route information from a route determination provider based on a first location associated with the client device and a second location associated with a corresponding service provider in response to obtaining the bids. (Specification, page 12, line 23, to page 13, line 13) The present invention obtains historical travel data from a historical database. (Specification, page 12, line 23, to page 13, line 13) The present invention calculates an estimated time of travel for each of the plurality of service providers based on the route information and the historical travel data. (Specification, page 13, lines 14-28) The present invention electronically determines an estimated time of completion for the service for each of the plurality of service providers based on the calculated estimated time of travel for each of the plurality of service providers. (Specification, page 13, line 28, to page 14, line 13) The present invention provides the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to the client device. (Specification, page 14, line 14, to page 15, line 12)

The apparatus recited in claim 12, as well as dependent claims 13-16 and 19-22, may comprise interfaces, service providers, and a processor, such as ETA based marketplace provider **114**, route determination provider **116**, service providers **108-112** of **Figure 1** and processors **202** or **204** of **Figure 2** performing the steps described in the specification at page 10, line 22, to page 15, line 20 and page 16, line 22, to page 17, line 6 and **Figures 4 and 6**, or equivalent. A person having ordinary skill in the art would be able to derive computer instructions on a computer readable medium as recited in claim 23, as well as dependent claims 24-27 and 30-33, given **Figures 4** and **6** and the corresponding description at page 10, line 22, to page 15, line 20 and page 16, line 22, to page 17, line 6, without undue experimentation.

## GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

**A.     GROUND OF REJECTION 1 (Claims 1-5, 8-16, 19-27, and 30-33)**

Whether claims 1-5, 8-16, 19-27, and 30-33 are obvious under 35 U.S.C. § 103(a) over *Vashistha et al.* (U.S. Pub. No. 2001/0051913 A1) in view of *Goino* (U.S. Pub. No. 2001/0056396 A1).

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# ARGUMENT

Claim 1 is a representative of the group and reads as follows:

1.      A method of providing service provider information to a client device in a distributed computer system, comprising:

obtaining bids from a plurality of service providers for providing a service;

responsive to obtaining the bids, obtaining route information from a route determination provider based on a first location associated with the client device and a second location associated with a corresponding service provider;

obtaining historical travel data from a historical database;

calculating an estimated time of travel for each of the plurality of service providers based on the route information and the historical travel data;

electronically determining an estimated time of completion for the service for each of the plurality of service providers based on the calculated estimated time of travel for each of the plurality of service providers; and

providing the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to the client device.

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). In this case, the *Vashistha* and *Goino* do not teach or suggest all of the features asserted to be present by the Examiner. Also, the cited references do not provide any teaching, suggestion, or incentive to combine or modify the teachings in the manner necessary to reach the presently claimed invention.

*Vashistha* and *Goino*, taken alone or in combination, fail to teach or suggest an electronically determining an estimated time of completion for the service for each of the plurality of service providers based on the calculated estimated time of travel for each of the plurality of service providers.

The Examiner alleges that *Vashistha* teaches determining an estimated time of completion for a service for each of a plurality of service providers in the following section:

[0081] Accordingly, outsourcing system 900 can be implemented to enable buyers and IT providers to confer and agree in a very efficient, neutral and intelligent manner for the planning, outsourcing, and/or procuring of information technology projects and services. Further, instead of the typical six-month period for conventional outsourcing methods, outsourcing system 900 can be conducted in significantly less time, for example, as little as three weeks. Accordingly,

provider 904 is ready to initiate work on the IT project. However, it may be desirable for buyer 902 to have a mechanism for overseeing the IT project, including any milestones and deadlines. In accordance with another aspect of the present invention, a system and method for outsourcing IT projects and services can also be configured for delivering and/or managing the IT projects and services.

[0082] In accordance with this aspect of the present invention, a project administration method and system can be provided to facilitate the delivering and/or managing the IT projects and services. In accordance with an exemplary embodiment, the project administration method and system can be configured to enable the buyer and the provider to oversee the delivery of the IT project, such as by using a browser-based application, to provide a secure workspace where project teams can suitably collaborate, conduct online conversations, such as with discussion module 922, track project milestones, monitor service levels, resolve issues, solicit feedback and/or authorize payment.

[0083] In addition, in accordance with another exemplary embodiment, the project administration method and system can enable the buyers and providers to administer the project entirely online, from anywhere in the world. This can include the ability to evaluate and track project milestones, and to monitor, update and analyze project performance metrics with detailed tables and graphs. In addition, the project administration system can be configured to submit and track changes to milestone dates, any failures to meet threshold metrics criteria, and any critical issues related to project completion. Moreover, the project administration system can be configured to review a content-based weekly or other periodic report that can provide an overview of the status of the project, and can provide various features such as a project milestones table, a performance metrics table and graphs, the access to all issues that have been raised, the ability to interact via online conferences that are archived for future reference, and the ability to facilitate financial transactions tied to completion of project milestones.

(*Vashistha*, paragraphs [0081]-[0083])

As can be seen in these cited sections, *Vashistha* teach an outsourcing system and a project administration system. The administration may be made online to track various parameters for a project. Nowhere, however do these paragraphs teach or suggest electronically determining an estimated time of completion for the service for each of the plurality of service providers based on the calculated estimated time of travel for each of the plurality of service providers, as recited in claim 1.

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[0084] With reference to FIG. 5, an exemplary project administration system 500 is illustrated. In accordance with this embodiment, project administration system 500 suitably comprises a project milestones module 502, a performance metrics module 506, a periodic update module 508, a discussion module 514, an update performance module 520, a milestone payment module 522, and a project end module 526. Project milestones module 502 comprises a table containing various milestones, e.g., various events, tasks, or steps required or otherwise to be performed for completion of the project, and which can be selected by either a buyer 516, a provider 510, or both. Project milestones module 502 is suitably configured for tracking the percentage of completion of each project, including the percentage of completion for event, task or step. Performance metrics module 506 is configured for tracking the performance criteria along the path of a project, e.g., from module 502 through module 526. As a result, issues deemed important to buyer 516 or provider 510 can be suitably tracked and archived, e.g., stored within project database 504, for future reference. In accordance with another exemplary embodiment, a project set-up consulting module 528 can be included to facilitate the tracking of project milestones and performance metrics.

[0085] As the project progresses, the milestones and performance metrics can be periodically updated within module 508. Update module 508 can be configured for various update periods, such as daily, weekly, monthly or any other period. In the exemplary embodiment, update module 508 is configured for a weekly update. Upon completion of the updating process, various report configurations can be provided to buyer 516 and provider 510.

[0086] For updating of the project, a provider 510 can suitably update a project with a project status 512 provided to update module 508. For confirmation, a buyer 516 can suitably review project status 512 and comment and discuss with provider 510 in discussion module 514. Once buyer 516 approves and confirms the project update status, buyer 516 can provide a status confirmation 518 to update performance module 520. Update performance module 520 is configured to update the project milestones and performance metrics provided within modules 502 and 506. Upon receiving status confirmation 518, update performance module 520 can suitably provide updated performance criteria to update module 508 for reporting to provider 510 and buyer 516. To facilitate resolution of any issues or disputes that may occur that are not resolved within discussion module 514, in accordance with another exemplary embodiment, project administration system 500 can also include an issue resolution consulting module 530 configured for providing consulting assistance to buyer 516 and provider team 510.

[0087] As each milestone is reached or completed, buyer 516 has an option to provide or release a payment 524 to provider 510 through use of milestone payment module 522. Milestone payment module 522 can comprise any payment

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distribution system. In an exemplary embodiment, milestone payment module 522 can be configured for electronic payment authorization to provider 510.

(*Vashistha*, paragraphs [0084]-[0087])

These cited paragraphs of *Vashistha* disclose a project administration system with a number of features for project management. The *Vashistha* system includes features, such as a module for updating information about the project, providing status information, and options for users when a milestone is reached or completed. Nowhere, however do these paragraphs teach or suggest electronically determining an estimated time of completion for the service for each of the plurality of service providers based on the calculated estimated time of travel for each of the plurality of service providers, as recited in claim 1.

As can be see, the cited portion of *Vashistha* teaches tracing the progress of a project after it has been procured and after it is being completed. Thus, *Vashistha* does not teach or suggest estimating a time of completion of a service responsive to bids being obtained.

Furthermore, the Examiner acknowledges that *Vashistha* does not teach or suggest that each bid includes an estimated time to perform the service and the steps of obtaining route information from a route determination provider, obtaining historical travel data, estimating a time of travel, or adding an estimated time of travel to an estimated time of completion of the service. The Examiner alleges, however, that *Goino* teaches these features in Figure 6, 14, 17-20 and 30, there related text, and other pertinent passages, which are shown as follows:

# Fig.6
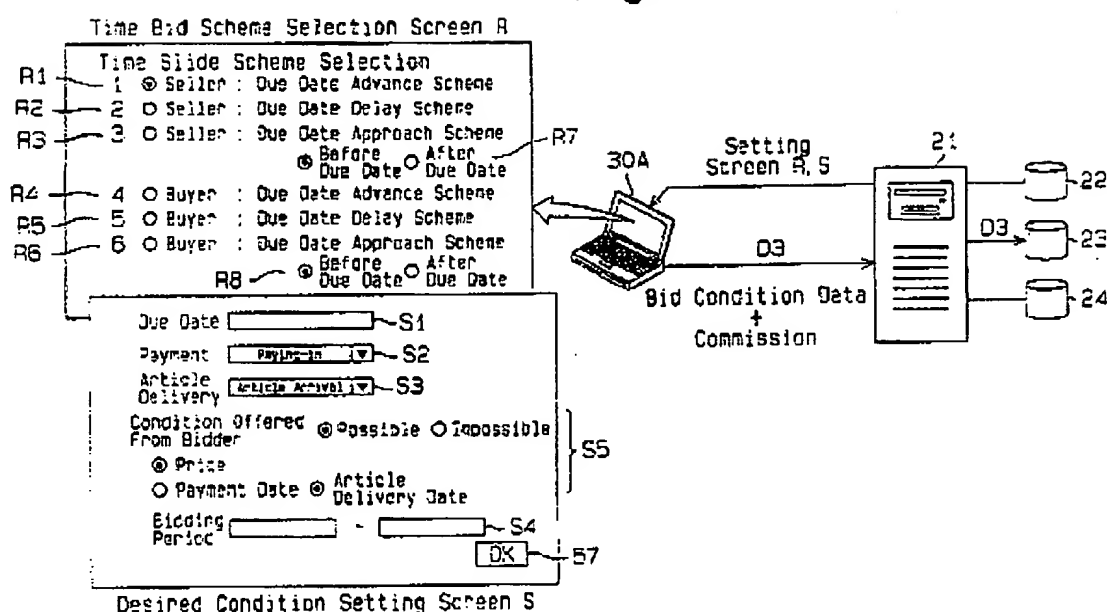


(Figure 6)

[0111] As illustrated in FIG. 6, the time bid scheme selection screen R is provided with six options R1 to R6 for selecting a particular time slide scheme. The options R1 to R6 provide a "due date advance scheme", a "due date delay 30 scheme", and a "due data approach scheme" for a seller and a buyer, respectively. In addition, the "due date approach scheme" is provided with options R7, R8 for selecting either "before due date" or "after due date".

*(Goino, paragraph [0111])*

In Figure 6 and the related description, *Goino* describes a time bidding scheme. Options are described for a "due date advance scheme", a "due date delay 30 scheme", and a "due data approach scheme" for a seller and a buyer. Nowhere, however do these paragraphs teach or suggest that each bid includes an estimated time to perform the service and the steps of obtaining route information from a route determination provider, obtaining historical travel data, estimating a time of travel, or adding an estimated time of travel to an estimated time of completion of the service, as recited in claim 1.

# Fig.14

List Screen XA



| NO | Code Number | Trading Data | Condition offerd by bidder | | |
|----|-------------|--------------|-------|---------|--------|
|    |             |              | Price | Article delivery date | |
| 1 | 00080 | 20 June | xxxxx Paying-in | 20 June | Shipment |
| 2 | 00079 | 20 June | xxxxx Paying-in | 20 June | Shipment |
| 3 | 00078 | 20 June | xxxxx Paying-in | 20 June | Delivery |
| 4 | 00077 | 20 June | xxxxx Paying-in | 25 June | Shipment |
| 5 | 00076 | 20 June | xxxxx Paying-in | 20 June | Delivery |
| 6 | 00075 | 20 June | xxxxx Paying-in | 1 July | Shipment |
| 7 | 00074 | 19 June | xxxxx Paying-in | 19 June | Shipment |

List XA1

Select successful bidder
NO.[          ]—XA2              [OK]—62

(Figure 14)

[0151] Alternatively, instead of the method of determining a successful bidder, conducted by the server 21, a trading partner may be determined in the following manner. For example, the server 21 lists information offered by bidders as it is, or creates a priority list by narrowing down successful bidder candidates at higher ranks, for example, to a limited number of bidders specified by the client based on the information offered by the bidders, and transmits the list to the terminal 30A of the client. Accordingly, a list screen XA as illustrated in FIG. 14 is displayed on the terminal 30A of the client. The screen XA is provided with a list XA1, an entry field XA2 for selecting a successful bidder, and an OK button 62. The list XA1 indicates a priority number, a code number, a trading date (date offered by a bidder), and bidder offered conditions (price, article delivery date and so on).

[0152] The client reviews offered conditions such as the trading dates in the list XA1 of the screen XA, determines a successful bidder favorable to the client, enters, for example, the priority number of the successful bidder in the entry field XA2, and selects the OK button 62. In response, the server 21 notifies the client and the successful bidder of an accepted bid. If the client can view the list XA1 on the terminal 30A in this way, the client can select a partner who offers favorable conditions for any element such as the price other than the trading date, even if several bidders offer the same paying-in date, or the client can select a

partner who may concede in the price or the article delivery date even if the
trading date is slightly late. The list screen XA corresponds to a browsing screen.

(*Goino*, paragraphs [0151]-[0152])

In Figure 14 and the related description, *Goino* describes a screen for a user to select a successful

bidder. Nowhere, however do these paragraphs teach or suggest that each bid includes an

estimated time to perform the service and the steps of obtaining route information from a route

determination provider, obtaining historical travel data, estimating a time of travel, or adding an

estimated time of travel to an estimated time of completion of the service, as recited in claim 1.
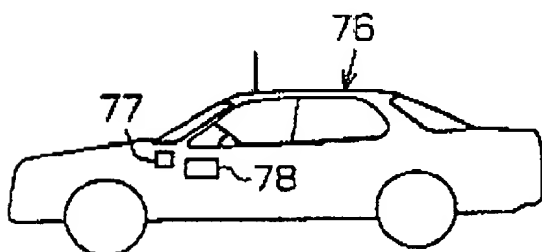
# Fig.17(a)             Fig.17(b)
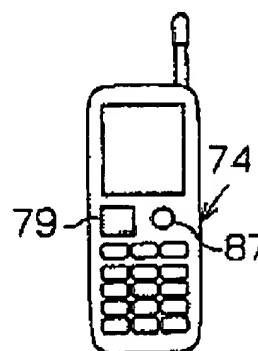


(Figures 17A and 17B)

[0166] As illustrated in FIG. 17A, each of taxis 76 is equipped with a GPS
(Global Positioning System) 78 which measures a position utilizing radio waves
of GPS satellites, so that the taxi 76 exactly measures a current position thereof
through the GPS 78, and transmits the position information from the transceiver
77 in the taxi 76 to the transceiver 75 in the taxi company. Accordingly, the
personal computer 72 exactly perceives current positions of all taxis 76 belonging
to the taxi company. Also, as illustrated in FIG. 17B, the portable telephone 74
held by a customer contains a GPS 79 so that it supports the positioning
capabilities. Therefore, a current position of the customer who carries the portable
telephone 74 is sequentially measured, as required, by the GPS 79 contained in
the portable telephone 74.

(*Goino*, paragraph [0166])

In Figures 17A and 17B and the related description, *Goino* describes a taxi and a personal phone that contain a GPS unit for locating the position of the taxi and a user. Nowhere, however do these paragraphs teach or suggest that each bid includes an estimated time to perform the service and the steps of obtaining route information from a route determination provider, obtaining historical travel data, estimating a time of travel, or adding an estimated time of travel to an estimated time of completion of the service, as recited in claim 1.

# Fig.18
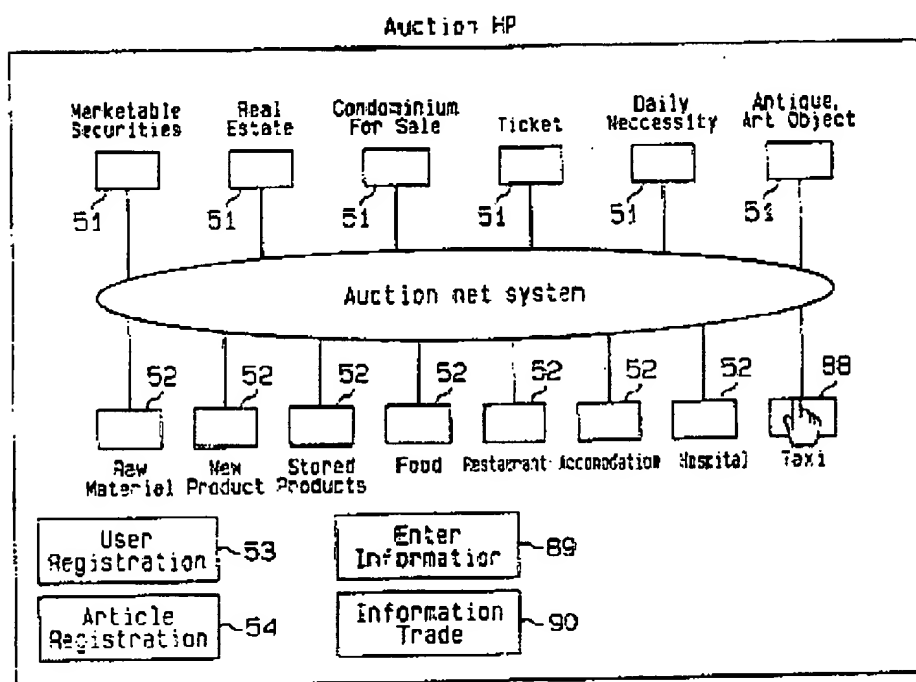


(Figure 18)

[0171] As illustrated in FIG. 18, the auction HP is similarly provided with a large number of selection buttons 51 classified into respective articles and services for auction, and a large number of selection buttons 52 classified into respective articles for counter-auction. A person who wants to participate in a bid (bidder) selects a selection button 51 or 52 of a desired article classification. It should be noted that FIG. 18 illustrates only a portion of article and service classifications. The auction HP is also provided with a user registration button 53 and an article registration button 54. Selection of the button 53 or 54 results in the registration screen P (FIG. 4) or the registration screen Q (FIG. 5) displayed on the terminal 30, and data entered from the screen P or Q is transmitted to the server 21 to proceed with user registration or article/service registration. An article also

includes information provision. The position auction also provides a business position auction (counter-auction) in which registered are dealers who provide a carrier such as a taxi which provides paid transportation services. For example, taxi companies may register themselves in this position auction as users to efficiently receive provision of customers through the position auction. While the taxi is given as an example in the second embodiment, the present invention may be applied to any mobile object (vehicle or the like) such as a collection/delivery car which is dispatched to a customer or a predetermined place near the customer for providing a service.

(*Goino*, paragraph [0171])

In Figure 18 and the related description, *Goino* describes a bidding home page where a bidder is able to select which auctions the bidder wants to participate in. Nowhere, however do these paragraphs teach or suggest that each bid includes an estimated time to perform the service and the steps of obtaining route information from a route determination provider, obtaining historical travel data, estimating a time of travel, or adding an estimated time of travel to an estimated time of completion of the service, as recited in claim 1.

# Fig.19

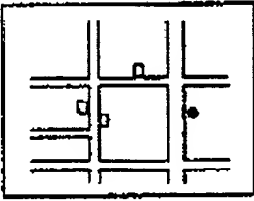Taxi Allocation Screen F



(Figure 19)

[0172] Since the auction HP has a "taxi" button 88, a customer may select this button. Then, the customer enters required items on a taxi allocation screen F illustrated in FIG. 19 which appears subsequent to the auction button HP in response to the selection of the taxi button 88. Specifically, the screen F is provided with a GPS button 91 for specifying a place at which the customer wants to take a taxi; a telephone number entry field F1, and a character entry field F2. The screen F is also provided with entry fields F3 to F6 for entering customer feature communication, desired take time (within how many minutes), number of passengers, and destination; a rank button 92 for specifying a taxi rank (large, middle, small, rate rank, and so on); and an ID number entry field F7. Here, the GPS button 91 on the screen F may be previously corresponded with the GPS 79 when using a portable telephone 74 which supports the GPS, so that GPS position data can be registered only by manipulating the button 91. As an alternative method of identifying a position, it is possible to enter a telephone number of the customer's residence, building or the like. The server 21 is connected to a system which identifies the address from the telephone number (telephone number search service company) so that the position can be identified provided that the telephone number is known. The character entry field F2 is filled with character information such as the address, place name, readily perceivable rendezvous place, or the like. The feature communication entry field F3 is filled with identifiable features of the customer himself. It should be noted that the taxi allocation screen F corresponds to a request screen.

(*Goino*, paragraph [0172])

In Figure 19 and the related description, *Goino* describes a screen where the customer may provide information on a taxi service that is requested by the customer, this information is relayed to a server. Nowhere, however do these paragraphs teach or suggest that each bid includes an estimated time to perform the service and the steps of obtaining route information from a route determination provider, obtaining historical travel data, estimating a time of travel, or adding an estimated time of travel to an estimated time of completion of the service, as recited in claim 1.

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# Fig.20

### Auction Participation Screen G



(Figure 20)

[0175] The auction participation screen G illustrated in FIG. 20 is provided with display fields G1 to G5 for offering customer information such as the position of a customer (a place at which the customer wants to take a taxi); the number of passengers; a specified rank of taxi; destination; the time at which the customer wants to take a taxi; and so on. The auction participation screen G is also provided with a map display field G6 which displays a map around the place at which the customer is present (map information). The position at which the customer is present (the place at which the customer wants to take a taxi) is indicated on the map (a black circle on the map in FIG. 20), such that the position at which the customer is present can be visually confirmed in a specific manner on the map. The screen G is also provided with entry fields G7, G8 for entering "taxi position" and "situation". For participating in the auction, there is a time limit in order not to have kept the customer waiting for a taxi to the utmost, so that a display field G9 is also provided for showing a remaining time. For participating in the auction, each taxi company should have entered required data in the entry fields G7, G8 within a time limit and select a participation button 94. It should be noted that the auction participation screen G corresponds to a bid screen.

(*Goino*, paragraph [0175])

In Figure 20 and the related description, *Goino* describes the auction preparation screen for offering information to taxis so that they may bid on offering the taxi service. Nowhere, however do these paragraphs teach or suggest that each bid includes an estimated time to

perform the service and the steps of obtaining route information from a route determination

provider, obtaining historical travel data, estimating a time of travel, or adding an estimated time

of travel to an estimated time of completion of the service, as recited in claim 1.

# Fig.30



Customer
allocation screen M
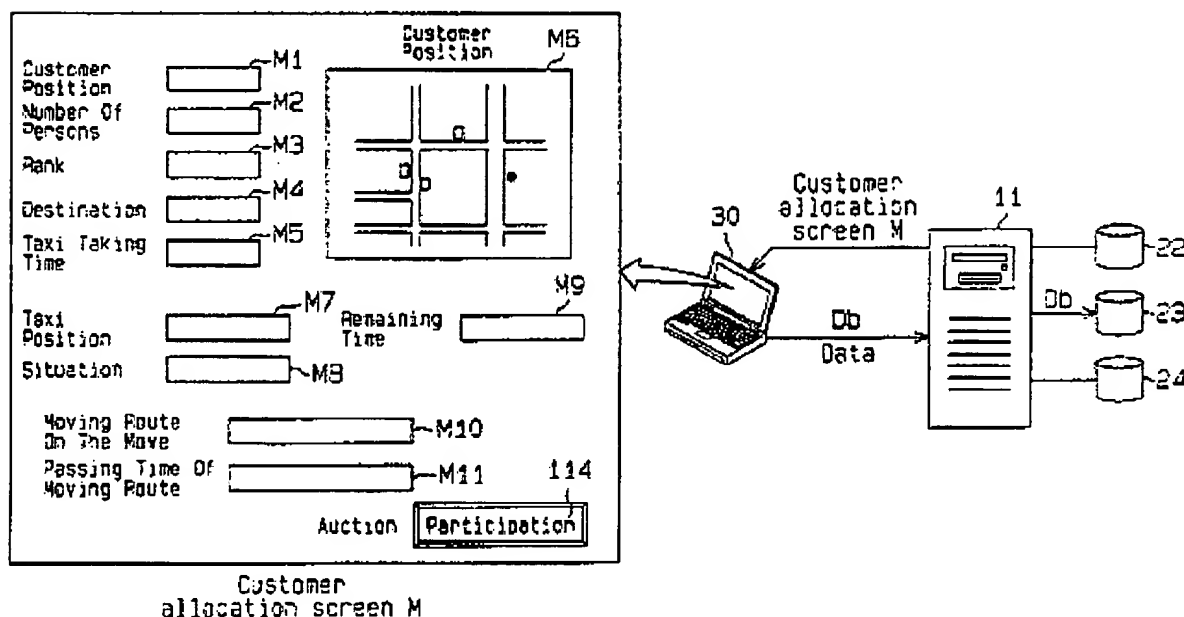
(Figure 30)

[0271] Now, explanation is given of the position auction of the form illustrated in
FIG. 29 for bidding off a customer who takes a taxi 76 at the nearest position
from a route along which the taxi is moving. While a variety of programs stored
in the memory for the server 21 to conduct the on-the-move auction are basically
similar to those used in the position auction, a customer allocation screen M
illustrated in FIG. 30 is displayed in the on-the-move auction. Assume herein that
customers have already reserved for a bid for allocation of a taxi.

(*Goino*, paragraph [0271])

In Figure 30 and the related description, *Goino* describes a screen that shows the allocation of a

taxi to a customer. Nowhere, however do these paragraphs teach or suggest that each bid

includes an estimated time to perform the service and the steps of obtaining route information

from a route determination provider, obtaining historical travel data, estimating a time of travel,

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or adding an estimated time of travel to an estimated time of completion of the service, as recited in claim 1.

Thus, *Goino* teaches various auction methods and systems. In fact, *Goino* teaches particular auction methods in which the location of a taxi is used to determine a winner of an auction. However, *Goino* does not teach obtaining route information from a route information provider or obtaining historical travel information from a historical database. While *Goino* does nominally mention a "custody history," a "professional history," and a "membership history," there is no mention whatsoever of historical travel information or a historical database in *Goino*. Therefore, *Goino* cannot possibly teach obtaining historical travel data from a historical database and calculating an estimated time of travel for each of the plurality of service providers based on the route information and the historical travel data, as alleged by the Examiner.

Furthermore, there is not so much as a suggestion in the *Vashistha* or *Goino* references to modify the references to include such features. The mere fact that a prior art reference can be readily modified does not make the modification obvious unless the prior art suggested the desirability of the modification. *In re Laskowski*, 871 F.2d 115, 10 U.S.P.Q.2d 1397 (Fed. Cir. 1989) and also *see In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992) and *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1993). The Examiner may not merely state that the modification would have been obvious to one of ordinary skill in the art without pointing out in the prior art a suggestion of the desirability of the proposed modification.

In this case, no teaching or suggestion is present in *Vashistha* and *Goino*, either alone or in combination, to teach or suggest the needed modifications. That is, no teaching or suggestion is present in either reference that a problem exists for which electronically determining an estimated time of completion for the service for each of the plurality of service providers based on the calculated estimated time of travel for each of the plurality of service providers, is a solution. To the contrary, *Vashistha* only teaches tracing the progress of a project after it has been procured and after it is being completed. *Goino* teaches particular auction methods in which the location of a taxi is used to determine a winner of an auction. Neither reference recognizes a need to perform the features, or similar features, as recited in claims 1, 12, and 23.

Moreover, neither *Vashistha* nor *Goino* teaches or suggests the desirability of incorporating the subject matter of the other when these cited references are considered as a
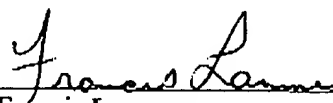
whole by one of ordinary skill in the art. That is, there is no motivation offered in either reference for the alleged combination. The Examiner alleges that the motivation for the combination is "its first object is to provide an auction method, an auction system and a server which can satisfy requirements other than the price for a client…to provide an auction method, an auction system and a server that permit a client who looks for a partner, with whom an article is sold or purchased, to find a trading partner who meets desired conditions in accordance with the client's circumstances with respect to trading dates such as the article delivery date, the payment deadline…to provide an auction method, an auction system and a server that can achieve the first object as well as meet requirements with respect to the position of a client." As discussed above, *Vashistha* is directed to tracing the progress of a project after it has been procured and after it is being completed and *Goino* is directed to locating a taxi to determine a winner of an auction. Thus, the only teaching or suggestion to even attempt the alleged combination is based on a prior knowledge of Appellant's claimed invention thereby constituting impermissible hindsight reconstruction using Appellant's own disclosure as a guide..

One of ordinary skill in the art, being presented only with *Vashistha* and *Goino*, and without having a prior knowledge of Appellant's claimed invention, would not have found it obvious to combine and modify *Vashistha* and *Goino* to arrive at Appellant's claimed invention. To the contrary, even if one were somehow motivated to combine *Vashistha* and *Goino*, and it were somehow possible to combine the two systems, the result would not be the invention, as recited in claims 1, 12, and 23. The result of combining *Vashistha* and *Goino* would merely result in determining the location of a taxi of a winner of an auction and tracing the progress of a project after it has been procured and after it is being completed.

Thus, *Vashistha* and *Goino*, taken alone or in combination, fail to teach or suggest all of the features in independent claims 1, 12, and 23. At least by virtue of their dependency on claims 1, 12, and 23, the specific features of claims 2-5, 8-11, 13-16, 29-22, 24-27, and 30-33 are not taught or suggested by *Vashistha* and *Goino*, either alone or in combination. Accordingly, Appellants respectfully request that the rejection of claims 1-5, 8-16, 19-27, and 30-33 under 35 U.S.C. § 103 not be sustained.

## CONCLUSION

In view of the above, Appellants respectfully submit that claims 1-5, 8-16, 19-27, and 30-33 are allowable over the cited prior art and that the application is in condition for allowance. Accordingly, Appellants respectfully request the Board of Patent Appeals and Interferences to not sustain the rejections set forth in the Final Office Action.

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# CLAIMS APPENDIX

The text of the claims involved in the appeal are:

1.      A method of providing service provider information to a client device in a distributed computer system, comprising:

        obtaining bids from a plurality of service providers for providing a service;

        responsive to obtaining the bids, obtaining route information from a route determination provider based on a first location associated with the client device and a second location associated with a corresponding service provider;

        obtaining historical travel data from a historical database;

        calculating an estimated time of travel for each of the plurality of service providers based on the route information and the historical travel data;

        electronically determining an estimated time of completion for the service for each of the plurality of service providers based on the calculated estimated time of travel for each of the plurality of service providers; and

        providing the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to the client device.

2.      The method of claim 1, further comprising:

        determining a service provider rating for each of the plurality of service providers; and

        providing the service provider rating for each of the plurality of service providers to the client device.

3.     The method of claim 1, further comprising:

receiving a selection of a selected service provider from the plurality of service providers and a

command to place an order for the service with the selected service provider; and

placing an order with the selected service provider.


4.     The method of claim 1, wherein the each bid includes a price for providing the service.


5.     The method of claim 4, wherein the each bid further includes an estimated time to perform the

service at the second location.


8.     The method of claim 5, wherein determining an estimated time of completion for the service for

each of the plurality of service providers comprises adding the estimated time of travel to the estimated

time to perform the service at the second location.


9.     The method of claim 1, wherein the method is implemented in an electronic marketplace

provider.


10.    The method of claim 9, wherein the electronic marketplace provider is present on a proxy server.


11.    The method of claim 9, wherein the electronic marketplace provider is present on the client

device.


12.    An apparatus for providing service provider information to a client device in a distributed

computer system, comprising:

a first interface which obtains bids from a plurality of service providers for providing a service;

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a processor which, responsive to obtaining the bids, obtains route information from a route determination provider based on a first location associated with the client device and a second location associated with a corresponding service provider, obtains historical travel data from a historical database, calculates an estimated time of travel for each of the plurality of service providers based on the route information and the historical travel data, and determines an estimated time of completion for the service for each of the plurality of service providers based on the calculated estimated time of travel for each of the plurality of service providers; and

a second interface which provides the bids from the plurality of service providers and the estimated time of completion for the service for each of the plurality of service providers to the client device.

13. The apparatus of claim 12, wherein the processor determines a service provider rating for each of the plurality of service providers and the second interface provides the service provider rating for each of the plurality of service providers to the client device.

14. The apparatus of claim 12, further comprising:

a third interface which receives a selection of a selected service provider from the plurality of service providers and a command to place an order for the service with the selected service provider; and

a fourth interface which places an order with the selected service provider.

15. The apparatus of claim 12, wherein each bid includes a price for providing the service.

16. The apparatus of claim 15, wherein each bid further includes an estimated time to perform the service at the second location.

19.    The apparatus of claim 16, wherein the processor adds the estimated time of travel to the

estimated time to perform the service at the second location.


20.    The apparatus of claim 12, wherein the apparatus is a part of an electronic marketplace provider.


21.    The apparatus of claim 20, wherein the electronic marketplace provider is present on a proxy

server.


22.    The apparatus of claim 20, wherein the electronic marketplace provider is present on the client

device.


23.    A computer program product in a computer readable medium for providing service provider

information to a service consumer in a distributed computer system, comprising:

     instructions for obtaining bids from a plurality of service providers for providing a service;

     instructions, responsive to obtaining the bids, for obtaining route information from a route

determination provider based on a first location associated with the client device and a second location

associated with a corresponding service provider;

     instructions for obtaining historical travel data from a historical database;

     instructions for calculating an estimated time of travel for each of the plurality of service

providers based on the route information and the historical travel data;

     instructions for determining an estimated time of completion for the service for each of the

plurality of service providers based on the calculated estimated time of travel for each of the plurality of

service providers; and

     instructions for providing the bids from the plurality of service providers and the estimated time

of completion for the service for each of the plurality of service providers to a service consumer.

24.    The computer program product of claim 23, further comprising:

instructions for determining a service provider rating for each of the plurality of service

providers; and

instructions for providing the service provider rating for each of the plurality of service providers

to the service consumer.


25.    The computer program product of claim 23, further comprising:

instructions for receiving a selection of a selected service provider from the plurality of service

providers and a command to place an order for the service with the selected service provider; and

instructions for placing an order with the selected service provider.


26.    The computer program product of claim 23, wherein each bid includes a price for providing the

service.


27.    The computer program product of claim 26, wherein each bid further includes an estimated time

to perform the service at the second location.


30.    The computer program product of claim 27, wherein the instructions for determining an estimated

time of completion for the service for each of the plurality of service providers comprises instructions for

adding the estimated time of travel to the estimated time to perform the service at the second location.


31.    The computer program product of claim 23, wherein the computer program product is executed in

an electronic marketplace provider.

32.     The computer program product of claim 31, wherein the electronic marketplace provider is

present on a proxy server.


33.     The computer program product of claim 31, wherein the electronic marketplace provider is

present on the client device.

# EVIDENCE APPENDIX

There is no evidence to be presented.

## RELATED PROCEEDINGS APPENDIX

There are no related proceedings.